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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A(MD)NO.815 OF 2022
and
C.M.P(MD)No.12512 of 2022

M.Sathiah

:Appellant/Appellant/
Plaintiff

.VS.

1.M.Muniyandi

2.M.Panchavarnam

3.M.Arumugam

4.M.Selvam

5.M.Rajendran

6.R.Murugesan

: Respondents/Respondents/
Defendants

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.41 of 2021, dated 17.11.2021, on the file of the Principal District Court, Ramanathapuram confirming the judgment and decree made in O.S.No.117 of 2010, dated 29.04.2019, on the file of the Subordinate Judge, Ramanathapuram.



For Appellant : Mr.F.Deepak
For Respondents : Mr.J.Barathan
1 to 6

JUDGMENT

This second appeal is filed challenging the concurrent judgments in A.S.No.41 of 2021, dated 17.11.2021, on the file of the Principal District Court, Ramanathapuram and in O.S.No.117 of 2010, dated 29.04.2019, on the file of the Subordinate Judge, Ramanathapuram.

2.The appellant/plaintiff filed a suit in O.S.No.117 of 2010 seeking partition of 1/7th share in the suit properties.

3.The case of the appellant as seen from the plaint averments in brief, is as follows:

The suit properties belong to the first defendant ancestrally. Item No.1 to 3 of the suit properties belong to the first defendant through his father and item No.4 and 5 of the suit properties were acquired by the first defendant from the income derived from item No.1 to 3 of the suit properties. The suit properties were enjoyed as ancestral joint family properties by the plaintiff and defendants.



The plaintiff and defendants 2 to 6 are the children of the first defendant. The seventh defendant is the purchaser of item No.4 of the suit properties. The plaintiff has 1/7th share in the suit properties. Without the knowledge and consent of the plaintiff, the first defendant had executed a settlement deed in favour of defendants 2 and 3 in respect of item No.5 of the suit properties. This is illegal and therefore, the settlement is not valid. When the suit was pending, the seventh defendant purchased item No.4 of the suit properties on 15.09.2011 from the first defendant and defendants 4 to 6. The first defendant died during the pendency of the suit and subsequently, his wife also died. The defendants 2 to 6 are the legal representatives of the first defendant. In the said circumstances, the suit for partition is filed.

4.The case of the plaintiff is opposed by the defendants 1 to 6 in written statement stating that only item No.1 of the suit properties is the ancestral property and item No.2 to 5 of the suit properties are the self-acquired properties of the first defendant. He had settled Item No.5 of the suit properties in favour of defendants 2 and 3 by Settlement Deed, dated 6.12.2006. They are in possession and enjoyment of item No.5 of the suit properties. The plaintiff had fraudulently registered a sale deed in his name in



respect of property in S.No.237/2 which lies on the western side of item No.5 of the suit properties. When it was questioned, plaintiff promised that he will not claim any share in item No.1 of the suit properties. Now the suit is filed with a false claim.

5.The seventh defendant filed a written statement stating that item No.4 of the suit properties is a self-acquired property of the first defendant. He settled the property in favour of the defendants 4 to 6 and they were in exclusive possession and enjoyment of the property. They sold this property to the seventh defendant for valid consideration. Thereafter, the seventh defendant is in possession and enjoyment of the said property by mutating the revenue records.

6.During trial, P.W.1 and D.W.1 to D.W.4 were examined. Ex.A1 to Ex.A6 and Ex.B1 to Ex.B14 were marked. On consideration of oral and documentary evidence, the learned trial Judge found that out of the suit properties, only item No.1 to 3 are ancestral joint family properties and item No.4 and 5 are self acquired properties of the first defendant. In this view of the matter, the learned trial Judge decreed the suit in part granting a decree for partition of 1/6th share in respect of item No.1 to 3 of the suit



properties and negating the prayer for partition in respect of item No.4 and 5 of the suit properties. Aggrieved against the judgment, the appellant/plaintiff filed an appeal in A.S.No.41 of 2021. The appellant's appeal ended in dismissal and the first appellate Court confirmed the judgment and decree of the trial Court. Thus the appellant is before this Court by way of this Second Appeal.

7.It is the submission of the learned counsel for the appellant/Plaintiff that the first defendant had no other income except the income derived from item No.1 to 3 of the suit properties for the purchase of item No.4 and 5 of the suit properties. When there is no other income, legal presumption that has to be drawn is that item No.4 and 5 of the suit properties would have been purchased only from the income derived from item No.1 to 3 of the suit properties. However, the Courts below have not properly appreciated the evidence produced in this regard and taken a different view of the matter, holding that item No.4 and 5 of the suit properties are self acquired properties of the first defendant. Thus he prays for reversing the judgment of the Courts below and decreeing the suit for partition in respect of item No.4 and 5 of the suit properties.



8.The learned counsel for the sixth respondent/seventh defendant submitted that item No.4 of the suit properties was the self acquired property of the first defendant. The first defendant had independent income, apart from the income derived from item No.1 to 3 of the suit properties. From his independent income, the first defendant purchased item No.4 and 5 of the suit properties, treated those properties as self acquired and independent properties and had settled the properties in favour of his sons. The seventh defendant purchased the properties from the settlees and is in independent possession and enjoyment of the property. The Courts below have rightly found that item No.4 and 5 of the suit properties are the self acquired properties of the first defendant and denied the relief of partition. Thus he prays for the dismissal of the Second Appeal.

9.This Court considered the rival submissions made on either side and perused the records.

10.From the pleadings set out, judgments of the Courts below and the submission of the learned counsel for the parties, there is no dispute with regard to the relationship between the plaintiff and defendants 1 to 6.The seventh defendant purchased the item No.4



of the suit properties from some of the defendants. It is also not in dispute that item No.1 to 3 of the suit properties are the ancestral joint family properties of the plaintiff and defendants 1 to 6.

11.The only question that requires consideration of this Court is whether item No.4 and 5 of the suit properties have been purchased from and out of the income derived from item No.1 to 3 of the suit properties. If so, what is the relief that is entitled to the parties?

12.Reading of the judgements of the Courts below, especially, the judgment of the trial Court shows that the learned trial Judge had considered extensively on the nature of the properties from the evidence available. The learned trial Judge found from the oral and documentary evidence, especially, the evidence of D.W.1 to D.W.3, that item No.1 to 3 of the suit properties are ancestral properties. Having come to the conclusion, the learned trial Judge found that the appellant/plaintiff failed to establish that item No. 1 to 3 of the suit properties,yielded income sufficient enough to meet the daily requirements and that there was surplus income available for the purchase of item No.4 and 5 of the suit properties. It was found that there is no oral and documentary evidence produced with regard to



the availability of income from item No. 1 to 3 of the suit properties for the purchase of item No.4 and 5 of the suit properties. The execution of Ex.B4, Ex.B7, Ex.B9 and Ex.B10 and Ex.B11, settlement deed in favour of the defendants show that the first defendant had all along treated the item No.4 and 5 of the suit properties as his self acquired and independent properties. He has not thrown these properties into common hotch pot for blending with other joint family properties and treated item No.4 and 5 of the suit properties as joint family properties. In Ex.B2, Settlement Deed executed by the plaintiff in favour of his wife, it was recognized that the item No.5 of the suit properties as self acquired property of the father. This evidence is a clear pointer to come to a conclusion that item No.4 and 5 of the suit properties are the self acquired properties of the first defendant and he treated these properties as his self acquired properties all through.

13.That apart, it is found from the evidence of the first defendant that he owned 300 goats and 20 cows. In the absence of any contra evidence and on the basis of the evidence available, the learned trial Judge had rightly found that item No.4 and 5 of the suit properties are the self acquired properties of the first defendant and was treated as such all through his life by executing a



settlement deed in favour of his sons. Then, in turn have sold one property to the seventh defendant. This finding of the trial Court was approved and upheld by the First Appellate Court. Both the Courts below have rightly concluded that only item No.1 to 3 of the suit properties are ancestral joint family properties and item No.4 and 5 of the suit properties are self acquired properties of the first defendant and thus decreed the suit in part in respect of item No.1 to 3 of the suit properties and dismissing the suit in respect of item No.4 and 5 of the suit properties. The concurrent findings, on the basis of correct appreciation of oral and documentary evidence, requires no reconsideration from this Court.

14.In ***Sir Chunilal V. Mehta and Sons .vs. The Century Spinning Co. Limited*** reported in ***AIR 1962 SC 1314***, the Honourable Supreme Court formulated what amounts to a substantial question of law, as follows:

- 1.Whether it is of general public importance (or)
- 2.Whether it directly and substantially affects the rights of parties **and if so;**
- 3.Whether it is **either** an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) **(or);**



4.The question is not free from difficulty and calls for discussion of alternative views;

15.In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this Second Appeal. Thus this Court finds that there is no cause for interference in the judgments of the Courts below and hence, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

07.11.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

- 1.The Principal District Judge,
Ramanathapuram.
- 2.The Sub-Judge,
Ramanathapuram.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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11

G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
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and
C.M.P(MD)No.12512 of 2022**

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